No. 01-1757

FEB 19 2003

IN THE

Supreme Court of the United States

MARION R. STOGNER,

Petitioner,

v.

STATE OF CALIFORNIA,

Respondent.

On Writ of Certiorari to the Court of Appeal of California, First Appellate District

BRIEF OF *AMICI CURIAE* AMERICAN PSYCHOLOGICAL ASSOCIATION, NATIONAL ASSOCIATION OF COUNSEL FOR CHILDREN, AMERICAN PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN, AND CALIFORNIA PROFESSIONAL SOCIETY ON THE ABUSE OF CHILDREN IN SUPPORT OF RESPONDENT

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February 19, 2003

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INTEREST OF *AMICI CURIAE*

Amici curiae are organizations and associations whose members often are called upon to address the devastating aftermath of child sexual abuse.[1]

[1] No counsel for a party authored any part of this brief. No person or entity other than *amici* and their counsel made any monetary contribution towards the preparation or submission of this brief. Both parties have given written consent to the filing of this brief.

The American Psychological Association (APA) is a non-profit scientific and professional organization founded in 1892. APA has more than 155,000 members and affiliates, including the majority of psychologists holding doctoral degrees from accredited universities in this country. APA's members play an important role in the treatment of both victims and perpetrators of child sexual abuse and related research and education. Division 37 of APA—Children, Youth and Family Services—is concerned with professional and scientific issues relative to services and service structures for children and youth. The Division seeks to advance research, education, training, and practice and relate psychological knowledge to other fields such as law and pediatrics. Section 1 of Division 37—Child Maltreatment—is focused expressly on psychological issues surrounding the abuse of children. This Section endeavors to support and promote scientific inquiry, training, professional practice, and advocacy in the area of child maltreatment, including childhood sexual abuse. The California Psychological Association, a professional association affiliated with APA, endorses the position of *amici* in this case.

The National Association of Counsel for Children (NACC) is a non-profit child advocacy and professional organization founded in 1977. NACC has approximately 2,000 members from all fifty states, including attorneys who represent children before family and juvenile courts, physicians, psychologists, social workers, and other professionals concerned with the protection of children. NACC helps train professionals who assist children within the legal system, and educates public officials about the needs of children, including children who have suffered sexual abuse.

The American Professional Society on the Abuse of Children (APSAC) is a multidisciplinary society of professionals working in the fields of child abuse research, prevention, treatment, investigation, litigation, and policy.

Founded in 1987, APSAC has more than 2,500 members, including professionals from all fifty states. APSAC seeks to increase knowledge about abuse and to promote effective identification, intervention, and treatment of abused children, their families, and offending individuals. APSAC's California chapter—the California Professional Society on the Abuse of Children (CAPSAC)—seeks to further these goals in the State of California.

Amici curiae submit this brief to present the relevant scientific knowledge that provides the context for this Court's review of whether a state may extend the statute of limitations for child sexual abuse offenses. While taking no formal position on the constitutionality of the statute at issue, *amici* submit this brief to provide the Court with information that supports the assumptions underlying California's decision to extend the statute of limi.ations. California appropriately recognized that—for a variety of reasons—victims of childhood sexual abuse often wait years before reporting the abuse to law enforcement. California's statute of limitations, therefore, prevents offenders from escaping prosecution based solely on the fact that their victims may be shamed, intimidated, or otherwise prevented from reporting abuse until well into adulthood.[2]

SUMMARY OF ARG UMENT

As the Court appropriately recognized in addressing child sexual abuse: "It is evident beyond the need for elaboration that a State's interest in 'safeguarding the physical and psychological well-being of a minor' is 'compelling.'" *Osborne v. Ohio*, 495 U.S. 103, 109 (1990) (quoting *New*

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[2] *Amici curiae* acknowledge the assistance of Thomas D. Lyon, J.D., Ph.D., Professor of Law, University of Southern California, in the preparation of this brief. Professor Lyon received assistance from Kathleen A. Kendall-Tackett, Ph.D., Mark J. Chaffin, Ph.D., Jodi A. Quas, Ph.D., Angela M. Crossman, Ph.D., and Sharon Portwood, J.D., Ph.D.

York v. Ferber, 458 U.S. 747, 756-57 (1982)). Accordingly, the Court has limited the constitutional rights of adults in numerous instances when necessary to prevent the sexual exploitation of children or to protect children victimized by sexual abuse. For example, the Court has upheld *per se* bans on child pornography, without any need to balance its potential merits, *Ferber*, 458 U.S. at 756-58; allowed courts to deny the press and public access to criminal trials when necessary to protect the well-being of child victims, *Globe Newspaper Co. v. Superior Court*, 457 U.S. 596, 607 (1982); and enforced restrictions on accused child molesters' rights to face-to-face confrontations at trial with their alleged child victims, *Maryland v. Craig*, 497 U.S. 836, 853 (1990).

The State of California furthered its compelling interest in protecting children by expanding the statute of limitations for certain child sexual abuse offenses involving "substantial sexual conduct," provided there is "independent evidence that clearly and convincingly corroborates the victim's allegation." Cal. Penal Code § 803(g)(2)(B) (West Supp. 2002). Because scientific and anecdotal evidence established it was not reasonable to expect victims of childhood sexual abuse promptly to report the crimes to law enforcement, California enacted Section 803(g) to ensure that these crimes do not go unpunished.

Amici submit this brief to demonstrate that the assumptions underlying Section 803(g) are supported by scientific evidence. For a variety of reasons discussed below, victims often are shamed, intimidated, or otherwise compelled to keep childhood sexual abuse a secret their whole lives. Although silent about their abuse, many victims continue to suffer from high rates of medical, psychological, and social problems throughout their adulthood. Those few who ever disclose the abuse frequently do so years after it has occurred, often in an effort to protect other children from the pedophile who abused them.

Amici also present empirical evidence demonstrating the risk to children if the California law is struck down. Unlike most violent criminals, child molesters remain at serious risk of reoffending throughout their lives. If Section 803(g) is invalidated, admitted and convicted sex offenders may be released from prison or escape prosecution altogether – denying victims the opportunity to hold their abusers accountable, exposing additional children to the risk of molestation, and reducing the likelihood that offenders will receive the psychological care they need.

ARGUMENT

I. CALIFORNIA'S STATUTE OF LIMITATIONS RECOGNIZES THAT VICTIMS OFTEN NEED ADDITIONAL TIME TO REPORT CHILDHOOD SEXUAL ABUSE.

Effective January 1, 1994, California Penal Code Section 803(g) extended the limitations period for certain sexual offenses to one year following a report to a law enforcement agency by a person of any age that he or she was the victim of sexual abuse while a minor. Cal. Penal Code § 803(g). The crime must have involved "substantial sexual conduct," and there must be "independent evidence that clearly and convincingly corroborates the victim's allegation." *Id.* § 803(g)(2)(B). "Substantial sexual conduct" is defined as vaginal or rectal penetration by a penis or foreign object, oral copulation, or mutual masturbation. *Id.* (incorporating, in part, the definition of "substantial sexual conduct" from Cal. Penal Code § 1203.066(b)). The independent corroborating evidence required by the statute must be admissible at trial and "does not include the opinions of mental health professionals." *Id.*

A. The California Legislature Determined Section 803(g) Was Needed Because Victims of Childhood Sexual Abuse Often Delay Reporting the Abuse.

Summarizing the impetus behind Section 803(g), California courts have explained:

> Section 803(g) was obviously designed to preclude child molesters from escaping punishment merely because the molestation was revealed after the victim became an adult and after the limitations period had elapsed. Certainly the Legislature was aware that children who are the victims of sex crimes often cannot recognize or effectively assert their victimization until they have reached adulthood. Moreover, victims of sex crimes may be more likely to delay reporting because they are afraid of reprisals or fearful that they will not be believed. The legislative purpose behind section 803(g) was to prevent sex offenders from reaping the benefits of their victim's immaturity and psychological trauma, and the legislative history plainly indicates that section 803(g) was intended to create an exception to the statutes of limitations.

Stogner v. Superior Court, 114 Cal. Rptr. 2d 37, 43-44 (Cal. Ct. App. 2001), *cert. granted sub nom. Stogner v. California*, 123 S. Ct. 658 (2002); *accord People v. Maguire*, 125 Cal. Rptr. 2d 556, 560 (Cal. Ct. App. 2002); *see also People v. Frazer*, 982 P.2d 180 (Cal. 1999) (upholding the constitutionality of the statute against *ex post facto* and due process challenges), *cert. denied*, 529 U.S. 1008 (2000).

The Report of the California Assembly's Committee on Public Safety endorsed this legislation because "[s]ex crimes committed against children are the most heinous of offenses. Unfortunately, many don't bring the crime to the attention [of] law enforcement until ma[n]y years later, when the statute of limitations has already expired." *Assemb.*

Comm. on Pub. Safety, Analysis of Assemb. Bill No. 2014, 1995-96 Reg. Sess. (Cal. 1996), at 1. The Report found a pressing need for the legislation because, under the prior statute of limitations, "[c]hildren become double victims—first victimized by the perpetrator and again by the judicial system. This measure will guarantee them their day in court." *Id.*

Indeed, numerous law enforcement organizations supported extending the statute of limitations "because in many instances sexual abuse crimes are not reported by the victim because of fear of the abuser, shame to her or himself, etc." Letter from Legislative Oversight Committee (the California Peace Officers' Association, California Police Chiefs' Association, and California State Sheriffs' Association) to Rep. Boland of 2/10/93, at 1.

The California legislature also heard from many adults who explained why they did not report sexual abuse that occurred during their childhood. In the 1991 hearings leading up to the ultimate passage of California's extended statute of limitations, one victim explained: "You see, I was scared and very protective, protective of the love that my parents had for me. If I had told the bad things that my uncle and I had done, my parents would not love me anymore. That's what I thought at the time." *The Criminal Statute of Limitations for Child Sexual Abuse Offenses: Interim Hearing Before the Assemb. Comm. on Pub. Safety*, 1991-92 Reg. Sess. 7 (tape 1A) (Cal. 1991) [hereinafter Public Safety Hearing] (statement of Ms. Hall). Another victim explained that it was not until she had reached adulthood and left her abusive home that she realized the toll the abuse had taken on her:

> I told myself it didn't affect me. He had been gentle, it was not violent, I was still a virgin so I told myself it didn't affect me. It did affect me. I am traumatized to

> this day by sexual abuse . . . . [B]ut it took me 10 more years before I could recognize how that abuse was impacting my life.

Id. at 9 (tape 1A) (statement of Ms. Fuller).

Additional witnesses testified that they did not come forward until they learned that others were being subjected to the same abuse. One witness explained, "[a] fragile young mind is too steeped with guilt to do anything and it is not until adulthood that people can get angry and feel willing and want to stop these people." *Id.* at 13 (statement of Ms. Ballinger). She testified, "[t]he reason that I feel that I had to come forward now is because I have found that my father is still molesting children. Three of my nieces have been molested. They range in age from 5 to 7." *Id.*

B. The California Legislature Determined Section 803(g) Was Needed Because Child Molesters Went Free Under the Prior Statute of Limitations.

Confirming what victims told legislators, law enforcement officials testified before the California legislature that the prosecution of child sex offenders was being thwarted by the previous statute of limitations. Law enforcement officials, representing approximately 25,000 California police officers, provided compelling testimony concerning the number of prosecutions that were being barred solely by the statute of limitations. One officer explained that in the twenty months preceding his testimony, the Los Angeles County Sheriff's Department had investigated and concluded that it could not prosecute sixty-eight reported cases of sexual abuse solely due to the statute of limitations. Public Safety Hearing at 1 (tape 3B) (statement of Mr. Lowman). Even where the evidence was overwhelming, he explained, the statute of limitations was barring prosecutions. For example, "[a]pproximately 90 percent of the victims depicted in

> [child pornography] cases that we investigate are currently adults making the crime out of statute." *Id.*

Mr. Lowman illustrated several other instances of time-barred claims. He explained that one thirty-seven-year-old woman reported being molested by her father from the age of five through seventeen, that her allegations were corroborated by her siblings, and that her father tacitly admitted his guilt to law enforcement. *Id.* at 1-2. Nevertheless, the father could not be prosecuted because of the statute of limitations. *Id.*

In a different case, the journal of a fifty-six-year-old man, entitled *My Erotic Experiences with Beautiful Little Girls*, was discovered. It graphically described his more than twenty-year child molestation spree. Based on the descriptions in the journal, law enforcement identified nine victims who described incidents of abuse that were "strikingly similar" to those in the journal. But because only one of the minors was abused within the limitations period, the perpetrator was sentenced to a mere sixteen months in prison. *Id.* at 3.

In 1996, the California legislature was provided additional examples of accused pedophiles having charges against them dismissed as a result of the statute of limitations. In one case, thirty-eight felony charges reportedly were dismissed against a man who allegedly engaged in hundreds of acts of sodomy and oral copulation with more then seventeen child victims. Letter from Legislative Coalition to Prevent Child Abuse to Sen. Marks of 6/4/96, at 1. Another man who allegedly victimized more than twenty-six children (including victims as young as nine months old) evaded prosecution for most of these offenses because of the statute of limitations. *Id.*

Victims also came forward in support of the bill with strong evidence to support their claims. One of these victims obtained a taped confession from a minister who admitted

sexually abusing him and others at choral camp, church, and other locations. That victim obtained a civil judgment against his abuser, but was denied criminal relief under the prior law. Although a criminal case apparently was brought against this alleged abuser, that action was dismissed due to the statute of limitations. Letter from Ross E. Cheit to Sen. Marks of 6/10/96, at 1. In objecting to this disparity, the victim's brother (who was his lawyer in the civil case against the child molester) advised California legislators that "[i]t is a cruel irony that that very same innocence can legally deprive the victims of the ability to understand the crimes committed against them until it is too late to prosecute their assailants." Letter from David A. Cheit to Sen. Marks of 5/22/96, at 1.

Plainly, the evidence considered by the California legislature highlighted a very disturbing and all too real problem. That evidence is confirmed by numerous well-designed scientific studies.

II. THE PURPOSES UNDERLYING CALIFORNIA'S STATUTE OF LIMITATIONS ARE SUPPORTED BY NUMEROUS SCIENTIFIC STUDIES.

Most child molesters will escape prosecution with or without the extended statute of limitations of Section 803(g). That is because most children victimized by sexual violence will never report those crimes to law enforcement. For those few who report the crimes, it often takes years before they are ready to discuss the traumatic events and confront their abusers. Regardless of whether they report the crimes, childhood sexual abuse victims often suffer from physical and psychological problems throughout their lives. At the same time, perpetrators often remain at risk for reoffending throughout their lives. Although Section 803(g) cannot completely prevent offenders from reaping the benefits of their victim's immaturity and the psychological trauma they inflict upon

them, it does provide redress for those victims who find the courage to report the crimes.

A. Childhood Sexual Abuse Is Rarely Reported.

Most childhood sexual abuse is never reported. Only 12% of the child sexual assaults in a nationally representative survey of 4,008 American women were ever reported to authorities. Rochelle F. Hanson et al., *Factors Related to the Reporting of Childhood Rape*, 23 Child Abuse & Neglect 559, 564 (1999) [hereinafter Hanson et al. 1999]. All of the incidents consisted of substantial sexual conduct between the molester and the victim: sexual assault was defined in that study as nonconsensual sexual penetration of the victim's vagina, anus, or mouth by a perpetrator's penis, finger, tongue, or an object, that involved the use of force, or the threat of force or coercion. *Id.* at 562. This low rate of reporting is similar to that found in earlier studies of the general population. Christopher Bagley & Richard Ramsay, *Sexual Abuse in Childhood: Psychosocial Outcomes and Implications for Social Work Practice*, 4 J. Soc. Work & Hum. Sexuality 33, 37 (1986) (finding that, in a community sample of women where abuse is defined as manual or more serious assault on a girl's genital area with direct force, threat of force, or where the perpetrator is more than three years older, 98% of abuse is never reported to police or child protection services); Paul E. Mullen et al., *Childhood Sexual Abuse and Mental Health in Adult Life*, 163 British J. Psychiatry 721, 729 (1993) (finding 92% of abuse not reported to any form of authority or social agency).

One reason few cases of sexual abuse are reported to law enforcement is that large percentages of victims never disclose the abuse to anyone. Another national survey (using the same methodology as Hanson et al. 1999) questioned 3,220 American women, and found that 28% of women who had been sexually assaulted as children had never told *anyone*

about the assault prior to the survey, "not mothers, best friends, or husbands." Daniel W. Smith et al., *Delay in Disclosure of Childhood Rape: Results from a National Survey*, 24 Child Abuse & Neglect 273, 283 (2000). These women had kept their abuse a secret for an average of over twenty-five years. *Id.* at 277-81. Among all women who disclosed their abuse, nearly half waited more than eight years to do so. *Id.* at 279-80.

Other surveys find similarly high rates of secrecy, and men are just as likely as women—if not more likely—to keep childhood sexual assault a secret. *See, e.g.*, David Finkelhor et al., *Sexual Abuse in a National Survey of Adult Men and Women: Prevalence, Characteristics, and Risk Factors*, 14 Child Abuse & Neglect 19, 21 (1990) (finding 33% of victimized women and 42% of victimized men had never disclosed childhood sexual abuse); *see* Thomas D. Lyon, *Scientific Support for Expert Testimony on Child Sexual Abuse Accommodation*, *in* Critical Issues in Child Sexual Abuse 116-17 (J.R. Conte ed., 2002); Mary L. Paine & David J. Hansen, *Factors Influencing Children to Self-Disclose Sexual Abuse*, 22 Clinical Psychol. Rev. 271, 274-75 (2002). Moreover, surveys underestimate long-term secrecy because many abuse victims who have not disclosed abuse to loved ones also fail to disclose to a surveyor. *See* David M. Fergusson et al., *The Stability of Child Abuse Reports: A Longitudinal Study of the Reporting Behaviour of Young Adults*, 30 Psychol. Med. 529, 531 (2000).

Unfortunately, even when children muster the courage to tell trusted adults about sexual abuse, or adults otherwise learn of the abuse, the adults often fail to report the offenses to law enforcement. Bagley & Ramsay, *supra*, at 37 (finding 75% of disclosures to adults did not result in reports to authorities). For instance, mothers hearing their children's complaints of sexual abuse often feel ambivalent about contacting authorities; they often feel inadequate, they may doubt the child, and they may fear or distrust the police and

social services. They also may feel pressure from family members, friends, and the abuser to keep the abuse a secret. Allan R. De Jong, *Maternal Responses to the Sexual Abuse of Their Children*, 81 Pediatrics 14, 18 (1988).

B. There Are Numerous Reasons Victims Do Not Report Childhood Sexual Abuse.

The reasons victims delay reporting childhood sexual abuse to authorities, if they report the abuse at all, are numerous: (1) offenders often threaten their victims to remain silent, including threatening to harm or kill the victims or their loved ones; (2) children may not appreciate the wrongfulness of the conduct, particularly when victimized by a trusted adult; (3) victims often are ashamed of what has transpired; and (4) victims often fear that they will not be believed, and are afraid of the consequence of disclosing the abuse. These factors are not exclusive and, in many cases, a combination of factors will influence the victim's decision not to reveal the abuse.[3]

Threats. Threats of violent reprisals against a child or the child's loved ones often are used by child molesters to intimidate their victims into silence. Of the 88% of childhood

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[3] The studies on delays in reporting discussed in this brief rarely mention delays due to forgetting and subsequent recovery of memory through therapy. This is not surprising, given that only a very small percentage of adults who report childhood sexual abuse report remembering the abuse with the help of a therapist or professional. Sharon Wilsnack et al., *Self-Reports of Forgetting and Remembering Childhood Sexual Abuse in a Nationally Representative Sample of US Women*, 26 Child Abuse & Neglect 139, 144 (2002) (finding 1.8% of national probability sample of women reported remembering abuse with help of therapist). At any rate, the requirement of independent corroborative evidence in Section 803(g) minimizes the likelihood that false memories would form the basis for prosecution. *Amici* are not addressing the issues of "induced false memory" or "recovered memory," about which there is no consensus in the literature.

sexual abuse incidents that were never reported in the Hanson study, almost half involved threats to the child's life (43%), almost half involved a series of assaults (42%), and over a fifth involved physical injury (22%). Hanson et al. 1999, *supra*, at 565 (Table 2). Once the abusive relationship is underway, perpetrators often warn or threaten the child not to reveal it. One nationwide survey of 954 criminal cases of childhood sexual abuse discussed the array of warnings used by child molesters:

> [W]arnings ranged from pleas that the abuser would get into trouble if the child told (or that the abuser would be sent away and the child would never see them again—a powerful message to a young child whose abuser is also a "beloved" parent), to threats that the child would be blamed for the abuse (especially troubling were children who were told that the defendant's intimate—the child's mother—would blame the child for "having sex" with the defendant and would thus turn against him or her), to ominous warnings that the defendant would hurt or kill the child (or someone he or she loved) if they revealed the abuse.

Barbara Smith & Sharon G. Elstein, Submission of Am. Bar Ass'n Fund for Justice and Educ. to Nat'l Ctr. on Child Abuse and Neglect, *The Prosecution of Child Sexual and Physical Abuse Cases: Final Report* 93, 122 (1993); *see also* Louise D. Sas & Alison H. Cunningham, Submission of London Fam. Ct. Clinic Inc. to Fam. Violence Prevention Div. Health Can., *Tipping the Balance to Tell the Secret: Public Discovery of Child Sexual Abuse* 1, 91-92 (1995) (reporting threats to hurt the child or a third-party, harm the mother emotionally, withdraw privileges, and warnings that the abuser would be harmed by the disclosure or that the child no longer would be loved by his or her mother).

Even without express warnings, children often intuit the dangers of disclosure. Sas and Cunningham's sample of 524 children whose sexual abuse was prosecuted in criminal court

found "overt threats were not necessary if the man had a history of violence within the home." Sas & Cunningham, *supra*, at 122. As one child responded when asked if the perpetrator had threatened her not to tell, "No, but I knew what he was capable of." *Id.*

Abuse of Trust. Childhood sexual abuse victims often do not confide in family and friends because abuse often is perpetrated by family and friends. Sexual abusers typically exploit a trusting relationship, either one that is born of family relationships and living arrangements, or one they create through their encounters with the child and his or her family. Michele Elliott et al., *Child Sexual Abuse Prevention: What Offenders Tell Us*, 19 Child Abuse & Neglect 579 (1995).

In the survey by Smith et al., only 10% of the childhood sexual assaults were by strangers, and stranger rapes were more likely to be disclosed. Smith et al., *supra*, at 278, 281. Child victims almost always knew their assailant: relatives made up about half of the perpetrators, and friends and acquaintances the other half. *Id.* at 278. Given their trust in their abusers, children often do not initially recognize that sexual abuse is wrong. Sas & Cunningham, *supra*, at 90. Indeed, this Court has recognized: "A child's feelings of vulnerability and guilt and his or her unwillingness to come forward are particularly acute when the abuser is a parent." *Pennsylvania v. Ritchie*, 480 U.S. 39, 60 (1987).

Shame. Another enduring disincentive for disclosure is shame and embarrassment. Often, a child's initial compliance with the sexual demands of a trusted adult leads him or her to feel responsible for the abuse, making it more difficult to disclose as the abuse increases in frequency and severity. Paine & Hansen, *supra*, at 281. Children can thus become trapped in abusive relationships. Boys suffer from additional barriers to disclosure, including socialization to conceal their vulnerabilities and the stigmatization of being abused by men. Juliette D. G. Goldman & Usha K.

Padayachi, *Some Methodological Problems in Estimating Incidence and Prevalence in Child Sexual Abuse Research*, 37 J. Sex Res. 305 (2000); Paine & Hansen, *supra*, at 275.

Self-blame may last into adulthood. In one survey, self-blame led some victims to "feel too ashamed or guilty" to disclose. Diana E. H. Russell, *The Secret Trauma: Incest in the Lives of Girls and Women* 132 (1986); *see also* Sally E. Palmer et al., *Responding to Children's Disclosure of Familial Abuse: What Survivors Tell Us*, 78 Child Welfare 259, 269 (1999) (finding that over half of victims attributed failure to disclose abuse during childhood to the belief that they deserved the abuse). Another team of researchers asked women who had been sexually abused to describe their most distressing experiences; women who disclosed abuse exhibited more disgust, whereas women who failed to disclose abuse exhibited more shame. George A. Bonanno et al., *When the Face Reveals What Words Do Not: Facial Expressions of Emotion, Smiling, and the Willingness to Disclose Childhood Sexual Abuse*, 83 J. Personality & Soc. Psychol. 94, 100-01 (2002).

Fear. When adults are questioned about their failure to disclose childhood sexual abuse, the most commonly mentioned motivator is fear: fear for themselves, fear for loved ones, and fear for the perpetrator. In Russell's survey of 930 adult women, forty-four women who disclosed abuse for the first time described fear of punishment by the perpetrator, a desire to protect the perpetrator, fear of abandonment and rejection, and fear of being blamed or not being believed. Russell, *supra*, at 132; *see also* Palmer et al., *supra*, at 269 (describing convenience sample of adults who had not disclosed sexual, physical and/or emotional abuse who mentioned "fear of the abuser (85%), fear of negative reactions from other family members (80%), fear that no one would believe them (72%)"). These fears also are expressed by children who manage to disclose, but only after long

delays. In Sauzier's review of 156 initially silent sexual abuse victims, they "described the fear of losing the affection and goodwill of the offender; fear of the consequences of telling (being blamed or punished for the abuse by the non-offending parent); fear of being harmed; and fear of retaliation against someone in their family." Maria Sauzier, *Disclosure of Child Sexual Abuse: For Better or for Worse*, 12 Psychiatric Clinics of N. Am. 455, 460 (1989).

Perhaps nothing captures victims' reasons for not coming forward as well as their own words. Victims have described their initial failure to realize that the abuse was wrong, *see* Sas & Cunningham, *supra*, at 134 ("He said only people who really love each other do that stuff"), and their resulting feelings of shame and self-blame, *see id.* at 130 ("I thought maybe I did something that made him want to do it"); Palmer et al., *supra*, at 271 ("I didn't want people to know the kind of family I had—I thought it made me look bad," "I didn't want anyone to know that I'd let somebody do that"). Victims also have described their fears of the abuser, *see* Palmer et al., *supra*, at 270 ("I believed that my abuser was so powerful that nobody could stop him—he was indestructible," "If I told or 'got' a baby, he would kill me and bury me under a tree"), and their fear that the abuser would hurt others, *see* Sas & Cunningham, *supra*, at 122 ("My little sister and I are close and he said, 'If you tell, I'll go after your little sister'"). Finally, victims have described their fears of their families' reaction, *see* Palmer et al., *supra*, at 270 ("My mother would hate me—I wouldn't have a family any more"), their fears of not being believed, *see id.* at 271 ("I thought no one would believe me—they would think I was crazy"); Sas & Cunningham, *supra*, at 127 ("I would be in a lot of trouble if the police had decided not to believe me—my entire family would have turned against me"), and their fears of being forced to leave their homes, *see id.* ("I was scared that someone would take me away from my brother and sister").

C. The Devastating Effects of Childhood Sexual Abuse Often Last Well Into Adulthood.

Prosecuting sex crimes committed against children years after they occur is justified because the harms of childhood sexual abuse do not end with childhood. Sexually abused children typically suffer from higher rates of serious medical, psychological, and social problems during adulthood than adults who were not abused as children. One of the most recent studies on the long-term effects of childhood sexual abuse cites a number of population studies demonstrating that child sexual abuse is related to higher rates of attempted suicide, mental disorders (including anxiety disorders, depression, alcohol abuse, drug abuse, eating disorders, conduct disorder, and borderline personality disorder), sexual revictimization, and relationship problems, including divorce. Elliot C. Nelson et al., *Association Between Self-Reported Childhood Sexual Abuse and Adverse Psychosocial Outcomes: Results from a Twin Study*, 59 Archives Gen. Psychiatry 139 (2002).

The research on the effects of childhood sexual abuse has grown more sophisticated with time. In the past decade, a number of methodologically rigorous studies have provided convincing evidence of a link between childhood sexual abuse and adult suffering. These studies examine large numbers of people, which increases the statistical power of the research. The studies draw participants from the general population, making the findings generalizable to the population at large. Finally, the studies control for possible alternative explanations for why sexually abused children might experience problems in adulthood, such as other disruptions in the family.

Molnar et al. conducted the first study examining the relationship between sexual abuse and a variety of psychological problems in a nationally representative sample of almost 6,000 Americans, aged fifteen to fifty-four. Beth E. Molnar et al., *Child Sexual Abuse and Subsequent Psychopathology: Results from the National Comorbidity Survey*, 91 Am. J. Pub. Health 753, 753 (2001). The authors acquired information about sexual abuse and about nineteen other "childhood adversities," including parental mental disorders and family violence. "After such potential confounders were adjusted for, there was still a strong, independent, statistically significant relationship between [childhood sexual abuse] and the majority of mood, anxiety, and substance disorders." *Id.* at 757. Sexual abuse victims were more than twice as likely as those without a history of sexual abuse to suffer from one or more mental disorders. *Id.* at 755 (Table 2).

In a separate study, with the same subjects and similar controls for childhood adversities, Molnar et al. found that women who had been raped as children were almost four times more likely than non-victims to make a serious attempt to commit suicide. Beth E. Molnar et al., *Psychopathology, Childhood Sexual Abuse and Other Childhood Adversities: Relative Links to Subsequent Suicidal Behaviour in the US*, 31 Psychol. Med. 965, 972 (Table 3) (2001). Men who were raped as children were eleven times more likely to attempt suicide than non-victims. *Id.*

Kendler et al. analyzed reports from 1,411 women averaging over thirty-five years of age and found significant increases in major depression, generalized anxiety disorder, alcohol dependence, and drug dependence among those who had been sexually abused as children, even after controlling for family dysfunction and parental mental illness. Kenneth S. Kendler et al., *Childhood Sexual Abuse and Adult Psychiatric and Substance Use Disorders in Women: An Epidemiological and Cotwin Control Analysis*, 57 Archives Gen. Psychiatry 953, 957 (Table 5) (2000). For the most seriously abused group—those for whom abuse included sexual intercourse—victims were almost five times as likely as nonvictims to suffer from multiple disorders. *Id.*

Similarly, Fleming et al. examined the reports of 710 women with respect to a large number of potentially negative outcomes from sexual abuse, including mental health problems, psychiatric symptoms, domestic violence, and sexual problems. Jillian Fleming et al., *The Long-Term Impact of Childhood Sexual Abuse in Australian Women*, 23 Child Abuse & Neglect 145, 147 (1999). They found that even after controlling for family dysfunction, women who had been sexually abused as children were more than twice as likely as those not abused to suffer from one or more adverse outcomes. *Id.* at 155 (Table 4). "The results of this study along with other research indicate that the associations between [childhood sexual abuse] and adult difficulties persist even after the potentially confounding childhood family and social factors are controlled for." *Id.* at 156.

Fergusson et al. surveyed 1,019 eighteen-year-old men and women and found statistically significant increases in psychiatric disorders related to sexual abuse, even "after adjustment for potentially confounding childhood and family factors." David M. Fergusson et al., *Childhood Sexual Abuse and Psychiatric Disorder in Young Adulthood: II. Psychiatric Outcomes of Childhood Sexual Abuse*, 34 J. Am. Acad. Child & Adolescent Psychiatry 1365, 1369 (1996) [hereinafter Fergusson et al. 1996]. The disorders included major depression, anxiety disorder, conduct disorder, alcohol dependence, substance abuse, and suicide attempts. *Id.* The authors estimated that eliminating sexual abuse would reduce the prevalence of these psychiatric disorders by 9% to 20%. *Id.* at 1373.

Mullen et al. compared 248 women who had been sexually abused as children to 244 women who had not been abused. Mullen et al., *supra*, at 722. After controlling for family background, women in the abused group exhibited statistically significant increased levels of mental illness, chronic ill-health, eating disorders, suicidal behavior, and inpatient psychiatric care. The increase in risks ranged from a

doubling of risk for chronic ill-health to a ten-fold increase in suicidal behavior. *Id.* at 726 (Table 2).

A particularly impressive method for assessing the potential effects of sexual abuse on long-term adjustment is by analyzing twin-pairs who are "discordant" for sexual abuse; that is, one twin has been sexually abused and the other has not. Twins share the same family background, experience similar events at the same developmental stages, and are genetically similar. If an abused twin exhibits more problems as an adult than a non-abused twin, this constitutes compelling evidence that abuse is the cause of the problems. Of course, a problem with twin studies is that it is difficult to identify large numbers of twins, let alone twins discordant for sexual abuse. Recently, however, Nelson et al. identified 283 same-sex adult twins who were discordant for child sexual abuse and who were raised in the same home. Nelson et al., *supra*, at 144 (Table 4). The findings were compelling: "In this large twin study, we found that individuals reporting a history of [childhood sexual abuse] had increased risk for subsequently occurring adverse outcomes of depression, suicide attempt, conduct disorder, alcohol and/or nicotine dependence, social anxiety, rape after the age of 18 years old, and divorce." *Id.* at 142.

Discussing the relevance of family background factors, the authors concluded that the data "provide strong evidence that [childhood sexual abuse] is associated with substantial risk not explained by these factors." *Id.* Compared to their non-abused twins, abused twins faced a 50% increase in the likelihood of major depression and alcohol dependence, were more than twice as likely to attempt suicide, and more than seven times as likely to experience divorce. *Id.* at 144 (Table 4).[4]

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[4] The elevated rates in this study are similar to those found in two previous twin-pair studies with smaller samples. *See* Stephen H. Din-

These studies clearly document long-term physical, psychological, and social harms suffered by adults who were sexually abused as children. The research demonstrates that the harms experienced by childhood sexual abuse victims cannot be attributed to other childhood adversities. At least four studies have found that effects were most serious when abuse was more severe. *See* Fergusson et al. 1996, *supra*, at 1373; Kendler et al., *supra*, at 953; Mullen et al., *supra*, at 726; Nelson et al., *supra*, at 143. Hence, a statute like California's, requiring "substantial sexual conduct," is one that targets the type of abuse most likely to cause the most serious and long-lasting harm.

This research examines individuals drawn from the population at large, avoiding difficulties in generalizing results from psychotherapy patients or college students. Clinical samples may disproportionately identify persons suffering the most from sexual abuse, Fleming et al., *supra*, at 146, and college samples may disproportionately identify persons suffering the least, Renae D. Duncan, *Childhood Maltreatment and College Drop-Out Rates: Implications for Child Abuse Researchers*, 15 J. Interpersonal Violence 987, 993 (2000). Nevertheless, research examining both samples have some value: clinical samples show that "some persons are harmed, and severely so" by child sexual abuse, whereas college samples suggest that some students apparently are able to withstand sexual abuse and emerge in good health. Bruce Rind et al., *The Validity and Appropriateness of Methods, Analyses, and Conclusions in Rind et al. (1998): A Rebuttal of Victimological Critique from Ondersma et al. (2001) and*

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widdie et al., *Early Sexual Abuse and Lifetime Psychopathology: A Co-Twin-Control Study*, 30 Psychol. Med. 41, 45-47 (2000); Kendler et al., *supra*, at 953. The elevated rates of harm found in those studies were not usually statistically significant. The authors of those studies emphasized that because of their limited sample sizes their statistical power to detect real differences was limited. Dinwiddie et al., *supra*, at 43; Kendler et al., *supra*, at 958.

Dallam et al. (2001), 127 Psychol. Bull. 734, 734 (2001). In a legal context, any harm is significant, particularly because those who seek legal intervention are those most likely to have suffered harm. The population studies establish that sexual abuse is associated with long-term harms and constitutes a serious public health concern. The research justifies California's efforts to redress the harms of childhood sexual abuse, regardless of when that abuse occurred.

D. Child Molesters Often Remain A Threat To Children Throughout Their Lives.

Prosecuting sex crimes committed against children years after they occur is justified because child molesters often are repeat offenders. Section 803(g) already has resulted in hundreds of convictions and guilty pleas in child sexual abuse cases. It is safe to assume that their incarceration has prevented additional children from being abused.

Perpetrators of child sexual abuse remain at risk of reoffending long after the abuse occurs. "Inducing a child to have sex does not depend on any overwhelming physical or sexual prowess but rather on verbal manipulation—an ability that, of course, does not recede with normal aging." Robert Dickey et al., *Age as a Differential Characteristic of Rapists, Pedophiles, and Sexual Sadists*, 28 J. Sex & Marital Therapy 211, 213 (2002).

Unlike most violent offenders, child molesters do not "age out" of criminality. Hanson analyzed data from 4,673 sexual offenders and found that the "recidivism rate of the extrafamilial child molesters showed relatively little decline until after age 50." R. Karl Hanson, *Recidivism and Age: Follow-Up Data from 4,673 Sexual Offenders*, 17 J. Interpersonal Violence 1046, 1054 (2002). Although research suggests that approximately 13% of child molesters are convicted of a subsequent sex offense, most studies track molesters for only four to five years. R. Karl Hanson & Monique T. Bussière, *Predicting Relapse: A Meta-Analysis of Sexual Offender*

Recidivism Studies, 66 J. Consulting & Clinical Psychol. 348, 351 (1998).

Studies with longer follow-up periods find substantially higher rates of recidivism, and reaffirm the fact that molesters pose long-term risks for reoffending. A study by Hanson et al. tracked 197 convicted child molesters, most of them for more than fifteen years, and found that 42% were convicted of a subsequent sexual and/or violent offense. R. Karl Hanson et al., *Long-Term Recidivism of Child Molesters*, 61 J. Consulting & Clinical Psychol. 646, 648 (1993) [hereinafter Hanson et al. 1993]. The offenders' ages were unrelated to their risk of recidivism, leading the authors to conclude that "child molesters appear to be at significant risk for reoffending throughout their life." *Id.* at 650. Prentky et al. tracked 115 convicted child molesters and calculated a recidivism rate of 41% within twenty-five years of release from prison. Robert A. Prentky et al., *Recidivism Rates Among Child Molesters and Rapists: A Methodological Analysis*, 21 L. & Hum. Behav. 635, 644 (1997). The researchers noted that child molesters showed smaller decreases in reoffending with advancing age than offenders who rape adults, and concluded that "child molesters are at risk to reoffend sexually throughout their lives." *Id.* at 652.

The recidivism rates calculated by these studies are conservative. As noted, many sex crimes committed against children are never detected. Hanson et al. 1993, *supra*, at 650; *see also* Gene G. Abel et al., *Self-Reported Sex-Crimes of Non-Incarcerated Paraphiliacs*, 2 J. Interpersonal Violence 3, 25 (1987). Conviction rates routinely are lower than arrest rates, which may more accurately reflect sexual reoffending. Prentky et al., *supra*, at 636. Whatever the rates of reoffending, the research demonstrates that even sexual offenses against children that occurred long ago evince a continuing risk of recidivism by the offender.

A ruling adverse to the State of California could jeopardize hundreds of convictions of child sex offenders that have been obtained in the nearly nine years since Section 803(g) became effective, and jeopardize countless future prosecutions when other victims ultimately come forward. In the event this Court strikes down Section 803(g), defense counsel are expected to seek the release of these convicted sex offenders through writs of *habeas corpus* and *coram nobis*.

CONCLUSION

For the foregoing reasons, *amici curiae* urge this Court to conclude that the assumptions underlying the State of California's extension of the statute of limitations for childhood sexual abuse offenses are supported by scientific evidence.

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February 19, 2003